

Amendments to the Drawings:

Figure 4 has been amended to show structural detail 2 to maintain consistency with the specification, as in the attached Replacement Sheet.

Figures 7(a) and 7(b) have been amended to show structural detail 13 to maintain consistency with the specification, as in the attached Replacement Sheet.

Figures 9(a) and 9(b) have been amended to show structural details 48 and 53 to maintain consistency with the specification, as in the attached Replacement Sheet.

REMARKS

This Amendment is filed in response to the Office Action dated April 7, 2005. This application should be allowed and the case passed to issue. No new matter is raised by this amendment. The amendment to the specification and drawings correct informalities noted by the Examiner and are supported throughout the specification. The amendment to claim 1 is supported throughout the specification, including page 15, lines 10-16; page 25, lines 16-26; and Figs. 1, 4, and 7(c), which clearly disclose the magnetic second region connected to the first region and that the magnetic second region on which a dynamic effect is acted on from outside of the second region. The amendment to claims 3 and 5 correct informalities.

Claims 1-22 are pending in this application. Claims 11-22 have been withdrawn, pursuant to a restriction requirement. Claims 1-10 have been rejected. Claims 1, 3, and 5 have been amended.

Specification

The specification, including the abstract, is objected to for a number of informalities. These objections are traversed, and reconsideration and withdrawal thereof respectfully requested.

The specification and abstract have been amended to address and correct the informalities noted by the Examiner.

Drawings

The drawings are objected to because they fail to show structural details described in the specification and because the drawings contain reference characters not disclosed in the specification. This objection is traversed, and reconsideration and withdrawal thereof respectfully requested.

Figures 4 and 9 have been amended to include reference numbers disclosed in the specification. In addition, the specification has been amended to clarify that certain reference numbers are illustrated in Fig. 8, not Fig. 9, and to include a reference to reference number 76 in Fig. 12.

The Examiner objected to the drawings because different reference characters were allegedly used to designate the same structural details. This objection is traversed, and reconsideration and withdrawal thereof respectfully requested.

Figures 1 and 4 depict different embodiments of the present invention. 37 C.F.R. § 1.84(p)(4) does not require the same reference character for similar structural details illustrated in different embodiments of the invention.

Applicants submit that the drawings comport with the requirements of 37 C.F.R. § 1.84.

Claim Rejections Under 35 U.S.C. § 112

Claims 1-10 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner asserted that “the outside” in claim 1 lacks antecedent basis and that the claim is grammatically awkward. In addition, the Examiner averred that claim 1 is incomplete because it lacks a structural element linking the first region and the second region. This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested.

Claim 1 has been amended to provide antecedent basis, clarify claim language, and clarify the structural relationship between the first region and the second region. Applicants submit that the claims comport with the requirements of 35 U.S.C. § 112.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-10 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kellogg et al. (U.S. Pat. No. 6,632,399). This rejection is traversed, and reconsideration and withdrawal

thereof respectfully requested. The following is a comparison between the invention as claimed and the cited prior art.

An aspect of the invention, per claim 1, is an analyte sampling element comprising a first region capable of quantitatively collecting and temporarily retaining an analyte. A magnetic second region is connected to the first region. A dynamic effect is acted on the second region from outside of the second region to move the first region.

The Examiner asserted that Kellogg et al. disclose an analyte sampling element comprising a first region capable of collecting and retaining a sample and a second region on which a dynamic effect acts to move the first region.

Kellogg et al., however, do not anticipate the claimed analyte sampling element because Kellogg et al. do not disclose an analyte sampling element comprising a magnetic second region, connected to the first region, on which a dynamic effect is acted on from outside of the second region to move the first region, as required by claim 1.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the disclosure in a single reference of each element of a claimed invention. *Helifix Ltd. v. Blok-Lok Ltd.*, 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994); *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 399, 36 USPQ2d 1101 (Fed. Cir. 1995); *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987). Because Kellogg et al. do not disclose the claimed analyte sampling element comprising a magnetic second region, connected to the first region, on which a dynamic

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effect is acted on from outside of the second region to move the first region, as required by claim 1, Kellogg et al. do not anticipate claim 1.

Applicants further submit that Kellogg et al. do not suggest the claimed analyte sampling element.

The dependent claims are allowable for at least the same reasons as the respective independent claims from which they depend and further distinguish the claimed analyte sampling element.

In view of the above amendments and remarks, Applicants submit that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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